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99-0009-R

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SR

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE 3-8-01

In re:

COMMERCIAL FINANCIAL
SERVICES, INC. and

CF/SPC NGU, INC.,

Debtors and Debtors-in-Possession.

ROCKY J. SNIDER, JAMES LEMIEUX,
MARY DODSON, PAMELA SOETEN,
BARBARA ORR and NANCY BANE,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

COMMERCIAL FINANCIAL SERVICES,
INC.,

Defendant.

Case No. 98-05162-R
Chapter 11

Case No. 98-05166-R
Chapter 11 Jointly Administered
with Case No. 98-05162-R

FILED
MAR 07 2001

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 00-CV-0732-H(M)

FILED

MAR 09 2001

TIMOTHY R. WALBRIDGE, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER DENYING MOTION TO WITHDRAW THE REFERENCE

This matter came on for hearing on February 14, 2001, on the Motion to Withdraw the Reference filed by the Plaintiff Class and the Class' Objection to Bankruptcy Judge Dana L. Rasure's Memorandum Opinion Regarding CFS's Motion to Strike Jury Demand and Report and Recommendation to the District Court Regarding Plaintiffs' Motion to Withdraw Reference. The Plaintiff Class appeared through its appointed class counsel, Mitchell M. McCune, Esq. and Jed E. Penney, Esq. of the firm of McCune & Penney. Defendant, Debtor and Debtor in Possession, Commercial Financial Services, Inc. ("CFS"), appeared through its counsel, Ronald

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E. Goins, Esq. of the firm of Tomlins & Goins. The Official Committee of Unsecured Creditors appeared through its counsel, Robert Glass, Esq. of the Glass Law Firm.

The Court, having reviewed the pleadings submitted by the parties, having heard the arguments of counsel for the Plaintiff Class and CFS, and being fully advised in the premises, makes the following findings of fact and conclusions of law:

1. The sole ground advanced by the Class in support of their Motion to Withdraw the Reference is the claim that the Class is entitled to a trial by a jury in this adversary proceeding. This Court must, therefore, determine the issue of the entitlement of the Plaintiff Class to a jury trial in ruling on the Motion to Withdraw the Reference.
2. CFS does not consent to the trial of this adversary proceeding to a jury.
3. CFS filed a Motion to Plaintiffs' Strike Jury Demand in the United States Bankruptcy Court for the Northern District of Oklahoma (the "Bankruptcy Court") on February 25, 2000.
4. The Bankruptcy Court granted CFS' Motion to Strike Plaintiffs' Jury Demand in its Memorandum Opinion Regarding CFS's Motion to Strike Jury Demand (the "Memorandum Opinion") and Report and Recommendation to the District Court Regarding Plaintiffs' Motion to Withdraw Reference (the "Report and Recommendation") filed August 21, 2000 in the Bankruptcy Court and filed in this Court on August 25, 2000. No appeal was filed by the Plaintiff Class from the Order of the Bankruptcy Court granting CFS' Motion to Strike Jury Demand.
5. In its Report and Recommendation, the Bankruptcy Court recommended that this Court deny the Class' Motion to Withdraw the Reference.

6. With regard to the Motion to Withdraw the Reference, this Court finds that procedurally, the Motion to Withdraw the Reference filed by the Plaintiff Class in the adversary proceeding in the Bankruptcy Court on April 12, 2000 was not timely filed as required by Rule B-6 of the District Court Rules for Bankruptcy Practice and Procedure of this District. Failure to timely file the Motion to Withdraw the Reference constitutes a waiver of the jury trial demand of the Plaintiff Class.

7. Substantively, the filing by Named Plaintiffs and class counsel of 1,498 claims denominated "Request for Payment of Administrative Expense" in the Bankruptcy Court on January 31, 2000 on behalf of each of the members of the class invoked the bankruptcy claims adjudication process and the equitable jurisdiction of the Bankruptcy Court with respect to the claims of the members of the Class. Invoking the claims adjudication process of the Bankruptcy Court results in a waiver of the jury trial demand of the Plaintiff Class.

8. While no appeal of the Order of the Bankruptcy Court granting CFS' Motion to Strike Jury Demand was filed, the Court finds that in the event CFS' Motion to Strike Jury Demand were before the Court for determination, CFS' Motion would be granted.

9. The Court finds that the Plaintiff Class has waived its claim to a trial by jury both procedurally and substantively as described above. Accordingly, the Plaintiff Class' Motion to Withdraw the Reference should be and hereby is DENIED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion to Withdraw the Reference of the Plaintiff Class is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court adopts the Report and Recommendation of the Bankruptcy Court.

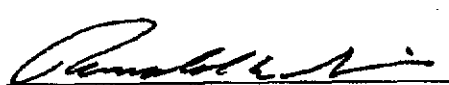
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter shall be referred to the Bankruptcy Court for further proceedings.

IT IS SO ORDERED this 7TH day of MARCH, 2001.


Sven Erik Holmes
United States District Judge

Order approved as to form:


Class Counsel


Counsel for Commercial Financial
Services, Inc.

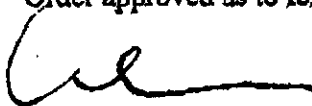

Counsel for the Official Committee of
Unsecured Creditors

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter shall be referred to the Bankruptcy Court for further proceedings.


IT IS SO ORDERED this ____ day of _____, 2001.

Sven Erik Holmes
United States District Judge

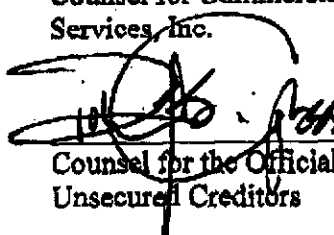
Order approved as to form:



Class Counsel



Counsel for Commercial Financial
Services, Inc.



Counsel for the Official Committee of
Unsecured Creditors